

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENNETH CLEMONS,

Petitioner,

Civil No. 05-60175

Criminal No. 93-80476

v.

Hon. John Corbett O'Meara

UNITED STATES OF AMERICA,

Respondent.

_____ /

**ORDER GRANTING THE GOVERNMENT'S REQUEST
TO TRANSFER AND ORDER TRANSFERRING PETITIONER'S
MOTION TO THE COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Before the court is Petitioner's writ of habeas corpus, filed July 7, 2005, in the Central District of California. Although Petitioner seeks relief under 28 U.S.C. § 2241, Judge Percy Anderson of the California district court construed Petitioner's motion as one to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Judge Anderson found that he lacked jurisdiction over Petitioner's motion and transferred the case to this court. The government has requested that this court transfer Petitioner's motion to the Court of Appeals for the Sixth Circuit.

Petitioner has previously filed a motion under 28 U.S.C. § 2255, which was denied by this court on February 5, 1999. He subsequently filed a motion for leave to file a second or successive motion under § 2255, which the Court of Appeals for the Sixth Circuit denied on December 6, 2004.

Petitioner's pending motion, which as been construed as a § 2255 motion, must be

transferred to the Sixth Circuit. “[W]hen a second or successive petition for habeas corpus relief or § 2255 motion is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631.” In re Sims, 111 F.3d 45, 47 (6th Cir. 1997).

Accordingly, IT IS HEREBY ORDERED that the government’s request to transfer Petitioner’s motion is GRANTED.

It is further ORDERED that Petitioner’s motion is TRANSFERRED to the Court of Appeals for the Sixth Circuit, pursuant to 28 U.S.C. § 1631.

s/John Corbett O’Meara

John Corbett O’Meara
United States District Judge

Dated: November 3, 2005